

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI**

Charles Fisher as representative of a class)
of similarly situated persons, and)
and **on behalf of the PRISM Plan for**)
Represented Employees of ABB, Inc. and)
Ronald Tussey, Timothy Hendron and)
Timothy Pinnell as representatives of a)
class of similarly situated persons,)
and **on behalf of the PRISM Plan for**)
Employees of ABB, Inc.,)

Plaintiffs;

v.

Cause No: 2:06-CV-04305 NKL

ABB, Inc., John W. Cutler, Jr., Pension)
Review Committee of ABB, Inc., Pension)
& Thrift Management Group of ABB, Inc.)
Employee Benefits Committee of ABB,)
Inc., Fidelity Management Trust Company,)
and Fidelity Management & Research Co.)

Defendants.

JOINT RESPONSE TO ORDER OF MAY 21, 2009

The parties in accordance with the Order of May 21, 2009 (Doc. 377) state that the following motions are pending before the Court:

Plaintiffs' Motions Pending:

	Plaintiffs' Motions Filed	ECF #
Motion	Plaintiffs' Motion for Partial Summary Judgment	257
	Suggestions of Law in Support of Plaintiffs' Motion for Summary Judgment	258
Related Filings	ABB Defendants' Suggestions of Law in Opposition to Plaintiffs' Motion for Partial Summary Judgment	314

	Plaintiffs' Motions Filed	ECF #
	Fidelity Defendants' Suggestions in Opposition to Plaintiffs' Motion for Summary Judgment	321
	Plaintiffs' Reply Suggestions of Law in Response to Fidelity Defendants' Opposition to Plaintiffs' Motion for Partial Summary Judgment	337
	Plaintiffs' Reply Suggestions of Law in Response to ABB Defendants' Opposition to Plaintiffs' Motion for Partial Summary Judgment	338
Motion	Plaintiffs' Motion to Strike Defendants' Untimely Disclosures	299
Related Filings	Fidelity's Suggestions of Law in Opposition to Plaintiffs' Motion to Strike Allegedly Untimely Disclosures	330
	ABB Defendants' Suggestions of Law in Opposition to Plaintiffs' Suggestions of Law in Support of Their Motion to Strike	331
	Plaintiffs' Reply in Support Plaintiffs' Motion to Strike	366
	Fidelity's Surreply Suggestions of Law in Opposition to Plaintiffs' Motion to Strike Allegedly Untimely Disclosures	370
Motion	Plaintiffs' Motion to Strike Fidelity Defendants' Reply Brief	364
	Plaintiffs' Suggestions of Law in Support of Their Motion to Strike	365
Related Filings	Fidelity Defendants' Suggestions in Opposition to Plaintiffs' Motion to Strike Fidelity Defendants' Reply Brief	371

ABB Defendants' Filings:

	ABB Motion Filed	ECF #
Motion	Motion to Strike Expert Reports and Testimony of David J. Witz	272
related filings	ABB's Suggestions of Law in Support of Motion to Strike Expert Reports and Testimony of David J. Witz	273
	Plaintiffs' Suggestions of Law in Opposition to Motion to Strike Expert Reports and Testimony of David J. Witz	306
	Reply Suggestions of Law in Support of Motion to Preclude Plaintiffs' Expert Witness David J. Witz from Testifying at Trial, filed on behalf of Fidelity and ABB Defendants	344

	ABB Motion Filed	ECF #
Motion	Motion to Strike Expert Reports and Testimony of Paul Kampner	274
related filings	ABB's Suggestions of Law in Support of Motion to Strike Expert Reports and Testimony of Paul Kampner	275
	Plaintiffs' Suggestions of Law in Opposition to Motion to Strike Expert Reports and Testimony of Paul Kampner	302
	Reply Suggestions of Law in Support of Motion to Preclude Plaintiffs' Expert Witness Paul Kampner from Testifying at Trial, filed on behalf of Fidelity and ABB Defendants	353
Motion	Motion to Strike Expert Reports and Testimony of Albert Otto	276
related filings	ABB's Suggestions of Law in Support of Motion to Strike Expert Reports and Testimony of Albert Otto	277
	Plaintiffs' Suggestions of Law in Opposition to Motion to Strike Expert Reports and Testimony of Albert Otto	305
	Reply Suggestions of Law in Support of Motion to Preclude Plaintiffs' Expert Witness Albert Otto from Testifying at Trial, filed on behalf of Fidelity and ABB Defendants	341
Motion	Motion to Join Fidelity's Motion to Exclude Expert Ross M. Miller from Testifying at Trial (<i>unopposed</i>)	278
related filings	Fidelity's Motion to Exclude Plaintiff's Expert Ross M. Miller from Testifying at Trial	262
	Fidelity's Suggestions of Law in Support of Motion to Exclude Plaintiff's Expert Ross M. Miller from Testifying at Trial	263
	ABB's Motion to Join Fidelity's Reply Suggestions in Support of Motion to Exclude Plaintiff's Expert Ross M. Miller from Testifying at Trial (<i>unopposed</i>)	340
	Fidelity's Reply Suggestions Motion to Exclude Plaintiff's Expert Ross M. Miller from Testifying at Trial	346
Motion	Motion to Join Fidelity's Motion to Exclude Expert Edward O'Neal from Testifying at Trial (<i>unopposed</i>)	279
related filings	Fidelity's Motion to Exclude Expert Edward O'Neal from Testifying at Trial	260
	Fidelity's Suggestions of Law in Support of Motion to Exclude Expert Edward O'Neal	261
	ABB's Motion to Join Fidelity's Reply Suggestions in Support of Motion to Exclude Expert Edward O'Neal (<i>unopposed</i>)	342
	Fidelity's Reply Suggestions Motion to Exclude Expert Edward O'Neal from Testifying at Trial	355
Motion	Motion to Strike the Expert Reports and Testimony of Steve Pomerantz, Ph.D.	280

	ABB Motion Filed	ECF #
related filings	ABB's Suggestions of Law in Support of Motion to Strike the Expert Reports and Testimony of Steve Pomerantz, Ph.D.	281
	Plaintiffs' Suggestions of Law in Opposition to Motion to Strike the Expert Reports and Testimony of Steve Pomerantz, Ph.D.	300
	ABB's Reply Suggestions of Law in Support of Motion to Strike the Expert Reports and Testimony of Steve Pomerantz, Ph.D.	343
Motion	Motion for Summary Judgment	284
related filings	ABB's Suggestions of Law in Support of Motion for Summary Judgment	285
	Affidavit of Jack Cutler in Support of Motion for Summary Judgment	286
	Affidavit of Catherine Cugell in Support of Motion for Summary Judgment	287
	Affidavit of Carol Story in Support of Motion for Summary Judgment	288
	Affidavit of Laura Hughes in Support of Motion for Summary Judgment (with exhibits)	289
	Supplemental Table of Contents and Table of Authorities	290
	Certificate of Service	291
	Plaintiffs' Suggestions of Law in Opposition to Motion for Summary Judgment	307
	Notice of Plaintiffs' Appendices of Exhibits	309
	Notice of Plaintiffs' Appendices of Exhibits	310
	Notice of Plaintiffs' Appendices of Exhibits	311
	Notice of Plaintiffs' Appendices of Exhibits	312
	Notice of Plaintiffs' Appendices of Exhibits	313
	ABB's Reply Suggestions of Law in Support of Motion for Summary Judgment (with Attachments: Declaration of Jeffrey Sturgeon and Exhibits)	339
	Plaintiffs' Notice of Supplemental Authority	332
	ABB's Response to Plaintiffs' Notice of Supplemental Authority re: Gallus	380
Motion	Motion to Strike Plaintiffs' Suggestions of Law in Opposition to Motion for Summary Judgment and to Deem Facts in ABB's Motion for Summary Judgment Admitted	347
related filings	ABB's Suggestions of Law in Support of Motion to Strike Plaintiffs' Suggestions of Law in Opposition to Motion for Summary Judgment and to Deem Facts in ABB's Motion for Summary Judgment Admitted	350
	Plaintiffs' Suggestions of Law in Opposition to Motion for Summary Judgment	307
	ABB's Suggestions of Law in Support of Motion for Summary Judgment	285
	Plaintiffs' Combined Suggestions of Law in Opposition to Fidelity Defendants' and ABB Defendants' Motions to Deem Admitted	372

	ABB Motion Filed	ECF #
Motion	Motion to Amend/Correct Suggestions (with Attached Errata)	376
related filings	ABB's Suggestions of Law in Support of Motion to Strike Witz	273
	ABB's Suggestions of Law in Support of Motion to Strike Otto	277
	ABB's Suggestions of Law in Support of Motion to Strike Pomerantz	281
	ABB's Suggestions of Law in Support of Motion for Summary Judgment	285
	ABB's Suggestions of Law in Opposition to Plaintiffs' Motion for Partial Summary Judgment	314
	ABB's Reply Suggestions of Law in Support of Motion for Summary Judgment (with Attachments: Declaration of Jeffrey Sturgeon and Exhibits)	339
	ABB's Reply Suggestions of Law in Support of Motion to Strike Pomerantz	343
	ABB's Suggestions of Law in Support of Motion to Strike and Deem Admitted Facts	350

Fidelity Defendants' Filings:

	Fidelity Defendants' Motion Filed	ECF#
Motion	Fidelity Defendants' Motion to Preclude Plaintiffs' Expert Edward S. O'Neal from Testifying at Trial	260
related filings	Suggestions of Law in Support of the Fidelity Defendants' Motion to Preclude Plaintiffs' Expert Edward S. O'Neal from Testifying at Trial	261
	Plaintiffs' Response to Fidelity's Motion to Exclude Plaintiffs' Expert Edward O'Neal from Testifying at Trial	304
	Reply Suggestions of Law in Support of the Fidelity Defendants' Motion to Preclude Plaintiffs' Expert Edward S. O'Neal from Testifying at Trial	355
Motion	Fidelity Defendants' Motion to Preclude Plaintiffs' Expert Ross M. Miller from Testifying at Trial	262
related filings	Suggestions of Law in Support of the Fidelity Defendants' Motion to Preclude Plaintiffs' Expert Ross M. Miller from Testifying at Trial	263
	Plaintiffs' Response to ABB and Fidelity's Motion to Exclude Plaintiffs' Expert Ross Miller	303
	Reply Suggestions of Law in Support of the Fidelity Defendants' Motion to Preclude Plaintiffs' Expert Ross M. Miller from Testifying at Trial	346

	Fidelity Defendants' Motion Filed	ECF#
Motion	Fidelity Defendants' Motion to Exclude Improper Testimony of David J. Witz	264
related filings	Suggestions of Law in Support of the Fidelity Defendants' Motion to Exclude Improper Testimony of David J. Witz	265
	Plaintiffs' Opposition to ABB and Fidelity Defendants' Motion to Preclude David Witz	306
	Joint Reply Suggestions of Law in Support of Defendants' Motions to Exclude Testimony of David J. Witz	344
Motion	Fidelity Defendants' Motion to Preclude Plaintiffs' Expert Paul Kampner from Testifying at Trial	266
related filings	Suggestions of Law in Support of the Fidelity Defendants' Motion to Preclude Plaintiffs' Expert Paul Kampner from Testifying at Trial	267
	Plaintiffs' Response to ABB and Fidelity's Motion to Exclude Plaintiffs' Expert Paul Kampner	302
	Joint Reply Suggestions of Law in Support of Defendants' Motion to Preclude Plaintiffs' Expert Paul Kampner from Testifying at Trial	353
Motion	Fidelity Defendants' Motion to Preclude Plaintiffs' Expert Albert J. Otto from Testifying at Trial	268
related filings	Suggestions of Law in Support of the Fidelity Defendants' Motion to Preclude Plaintiffs' Expert Albert J. Otto from Testifying at Trial	269
	Plaintiffs' Opposition to ABB and Fidelity Defendants' Motion to Preclude Albert Otto	305
	Joint Reply Suggestions of Law in Support of Defendants' Motions to Preclude Plaintiffs' Expert Albert J. Otto from Testifying at Trial	341
Motion	Fidelity Defendants' Motion to Preclude Plaintiffs' Expert Steve Pomerantz from Testifying at Trial	270
related filings	Suggestions of Law in Support of the Fidelity Defendants' Motion to Preclude Plaintiffs' Expert Steve Pomerantz from Testifying at Trial	271
	Plaintiffs' Opposition to Defendants' Motion to Exclude Plaintiffs' Expert Steve Pomerantz	300
	Reply Suggestions of Law in Support of the Fidelity Defendants' Motion to Preclude Plaintiffs' Expert Steve Pomerantz from Testifying at Trial	351
Motion	Fidelity Defendants' Motion for Summary Judgment	282
related filings	Suggestions of Law in Support of Fidelity Defendants' Motion for Summary Judgment	283
	Plaintiffs' Suggestions in Opposition to Fidelity Defendants' Motion for Summary Judgment	308
	Plaintiffs' Notice of Supplemental Authority in Support of Their Suggestions in Opposition to Defendants' Motions for Summary	332

	Fidelity Defendants' Motion Filed	ECF#
	Judgment	
	Reply Suggestions in Further Support of Fidelity Defendants' Motion for Summary Judgment	354
	Fidelity Defendants' Response to Notice of Supplemental Authority Regarding <i>Gallus v. Ameriprise Financial</i>	374
Motion	Fidelity Defendants' Motion to Deem Admitted Facts Contained in Their Motion for Summary Judgment	348
related filings	Fidelity Defendants' Suggestions of Law in Support of Motion to Deem Admitted Facts Contained in Fidelity Defendants' Motion for Summary Judgment	349
	Combined Opposition to Fidelity Defendants' and ABB Defendants' Motions to Deem Admitted	372
	Reply due May 29, 2009	
Motion	Fidelity's Motion to Correct Fidelity Suggestions in Support of Motion for Summary Judgment, Suggestions in Opposition to Plaintiffs' Motion for Partial Summary Judgment and Reply Suggestions in Support of Motion for Summary Judgment and Suggestions in Support	373
	Response due June 1, 2009	
Motion	Fidelity Defendants' Motion to Correct Fidelity's Daubert Suggestions and Suggestions in Support	381
	Response due June 5, 2009	

Third Party Filings:

	Filings by Third Parties	ECF #
Motion	Motion to Intervene and to Challenge Confidentiality Designations, and Suggestions in Support (Filed by International Paper)	296
Related Filings	Fidelity Defendants' Response to International Paper's Motion to Intervene and Challenge Confidentiality Designations	301
	Plaintiffs' Response to International Paper's Motion to Intervene and Challenge Confidentiality Designations	327
	Fidelity Defendants' Response to Plaintiffs' Response to International Paper's Motion to Intervene	367
	International Paper's Reply Suggestions in Support of Motion to Intervene and to Challenge Confidentiality Designations	362

	Filings by Third Parties	ECF #
Motion	Albert J. Otto's Motion to Intervene and Respond to International Paper's Motion to Intervene and Challenge Confidentiality Designations	325
Related Filings	Plaintiffs' Response to Albert Otto's Motion to Intervene and Respond to International Paper's Motion to Intervene and Challenge Confidentiality Designations	363

Respectfully Submitted,

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